IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.19155 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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SHREE L.H.H. & J.M.T. SARVAJANIK KANYA VIDYALAYA TRUST - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
MR HEMANG H PARIKH, AGP for Respondent(s): 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 17/12/2007
ORAL JUDGMENT

(1) This petition has been filed with the following prayers:

“14. In the aforesaid premises, the petitioner most humbly prays that:

A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dtd. 28.3.2007 passed by the District Education Officer and further be pleased to direct the authorities to permit the petitioner tun the additional class of Std. X in the school and also to pay the grant as per the rules;

B) Pending admission, hearing and final disposal of this writ petition, Your Lordships may be pleased to stay the operation, implementation and execution of the impugned order dtd. 28.3.2007 passed by the District Education Officer and further be pleased to direct the respondents not to restrain the petitioner from running the additional class of Std. X and further to give the grant as per the rules;

C) Be pleased to pass such other and further reliefs as may be deemed just and proper by Your Lordships in the facts and circumstances of the case."

(2) Heard the learned advocate for the petitioner and the learned advocate for the respondent authorities. Considering the narrow scope of controversy between the parties, the petition

is taken up for final hearing and disposal today. RULE.Learned advocate for the respondent authorities is directed to waive service of rule.

(3) The petitioner is aggrieved by the order dated 28.03.2007 made by the District Education Officer, Vadodara-respondent No.3, whereunder one additional class of Std. X in the school run by the petitioner-Trust has been ordered to be closed down. According to the learned advocate for the petitioner, the impugned order does not contain valid reasons for rejection of one class of Std. X considering the average attendance of the students. For this purpose, the learned advocate for the petitioner has placed reliance on the tabular chart at Annexure 'A' showing average attendance for last three years for standards VIII, IX and X. The petitioner has also placed reliance on the extract from Circular issued under Grant-in-Aid Code as per Annexure 'B'. It was further contended that the

impugned order does not refer to any resolution and it is only in the affidavit-in-reply that the authority has referred to the resolution dated 30.05.2000. That even if one goes by the said resolution, which amends Regulation No.9(13)(3) of the Gujarat Secondary Education Regulations, 1974 (the Regulations) it only says that the class will have maximum 60 students after taking into consideration the amount of area available in the class room. That in fact in case of the petitioner the class rooms are small and hence, there is no question of accommodating 60 + 05 students, because, even otherwise, the petitioner has on its role 68 students for Std. X.

(4) The learned Assistant Government Pleader appearing on behalf of the respondent authorities has submitted that the entire case of the petitioner is based on what is provided for in the Grant-in-Aid Code but once there are statutory Regulations the Regulations will

hold field and hence, the strength of the students has to be considered in context of the relevant Regulations, which is 60 + 05 depending upon the area of the class room. That the petitioner has not stated in the petition as to what is the area of class room and hence, the petitioner cannot be heard to make a grievance at this stage.

(5) Having heard the parties it is apparent that the impugned order dated 28.03.2007 cannot be sustained as the same proceeds only on the footing of projected strength of the students on the basis of students studying in standards VIII and IX during Academic Year 2007-2008. The impugned order nowhere refers to the Regulation No.9(13)(3) of the Regulations to determine as to how and in what manner the petitioner violates the said Regulations. In fact in the entire order there is no mention as to the current strength of students vis-a-vis the Regulation for holding that the petitioner is not entitled to an additional class for Std. X.

The reasons stated in the affidavit-in-reply regarding the Regulation not permitting students more than 60 + 05 depending on the area of the class room does not find any mention in the impugned order.

(6) In the circumstances, without recording any opinion on merits of the matter, the impugned order is quashed and set aside, leaving it open to the respondent authority to initiate fresh action in accordance with law. The respondent authority shall grant an opportunity of hearing to the petitioner, after issuing a fresh show cause notice.

(7) The petition is allowed accordingly. The impugned order dated 28.03.2007 is hereby quashed and set aside. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*